

BOARD OF APPEALS CASE NO. 5099

BEFORE THE

APPLICANTS: Richard & Laurie Malanga

ZONING HEARING EXAMINER

**REQUEST: Variance to enclose an existing patio
within the required front & rear yard setbacks;
801 Tiffany Trail, Abingdon**

OF HARFORD COUNTY

Hearing Advertised

Aegis: 11/8/00 & 11/15/00

HEARING DATE: December 20, 2000

Record: 11/10/00 & 11/17/00

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Richard A. and Laurie A. Malanga are seeking a variance pursuant to Section 267-23C(1)(a)(2) and Section 267-36C, Table V of the Harford County Code, to allow an existing concrete patio within the 27 foot required front yard setback (26 feet proposed), and future enclosure of the existing patio within the required 30 foot front yard setback (26 feet proposed) and 35 foot rear yard setback (34 feet proposed) in an R1/COS/NRD Urban Residential w/Conventional Open Space and Natural Resource District Development Adjustment.

The subject property is within the Village of Bynum Run Estates subdivision at 801 Tiffany Trail, Abingdon, Maryland 21009 and is more particularly identified on Tax Map 62, Grid 2b, Parcel 265, Lot 39. The subject parcel consists of 10,482 square feet, is zoned R1/COS/NRD Development Adjustment and is entirely within the First Election District.

Mr. Richard Malanga appeared and testified that he and his wife, the Co-Applicants herein, purchased the subject parcel 4 years ago. The existing patio is 16 feet by 18 feet and was poured at the time the house was built. The home is on a corner lot and is subject to two front yard setbacks. Recently, the Applicants' applied for a permit to construct a patio enclosure on the existing patio and learned that the existing concrete patio encroached into the rear yard setback. As a result, three variances are required – the first relates to the patio and the last two relate to the enclosure. The enclosure will be built to match the appearance of the existing home and will be the same dimensions as the existing patio.

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Mr. Anthony McClune appeared and testified that the lot is unique for several reasons. It is an irregularly shaped corner lot, subject to two front yard setbacks and varying lot line distances to the rear. Additionally, there is open space to the rear of the property that acts as additional buffer mitigating the normal need for setbacks as set forth in the Code. Mr. McClune testified that the granting of these variances would be consistent with good planning and zoning principles, consistent with other similar variances granted to other parcels and applicants and finally, that the proposed enclosure was similar in size and shape to other patio and deck enclosures found in this neighborhood as well as others throughout Harford County. Mr. McClune did not feel a grant of the requested variance would result in any adverse impacts or materially impair the purposes of the Code. He did feel denial would work an unwarranted hardship on the Applicant and deny the Applicant rights commonly enjoyed by other property owners in the neighborhood.

There were no persons present in opposition to the Applicants' request.

CONCLUSION:

The Applicants seek a variance pursuant to Section 267-23C(1)(a)(2) and Section 267-36C, Table V, of the Harford County Code, to allow an existing patio within the 27 foot front yard setback (26 feet proposed) and a future patio enclosure within the 30 foot front yard setback (26 feet proposed) and within the 35 foot rear yard setback (34 feet proposed).

The Harford County Code, pursuant to 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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Based on the testimony of the Applicant and the findings and testimony of the Department of Planning and Zoning, the Hearing Examiner concludes that the requirements set forth in Code Section 267-11 have been met. The property is unique and no adverse impacts will result from a grant of the variance nor will the purposes of the zoning code be materially impaired. The Applicants, if the request would be denied, would be forced to remove a portion of the patio and would not be able to construct an enclosure as proposed. This would represent an unwarranted hardship on the Applicants and deny them a use of their property commonly enjoyed by others.

The Hearing Examiner, therefore, recommends approval of the request subject to the Applicants obtaining any and all necessary permits and inspections.

Date JANUARY 17, 2001

William F. Casey
Zoning Hearing Examiner